



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Numbers: EA/12736/2016
EA/06782/2017

THE IMMIGRATION ACTS

Determined at Field House

On 16th February 2018

**Determination
Promulgated**

On 19th March 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE SAINI

Between

**MISS WERONIKA ELZBIETA JENDRZEJEWSKA
MR AMRO ALY YOUSSEF HUSSEIN HABKA
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr C Lam, Solicitor: David Tang & Co
For the Respondent: Mr S Walker, Senior Presenting Officer

DECISION BY CONSENT AND DIRECTIONS

Determination by Consent

1. Pursuant to Rule 39 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and by the consent of the parties the following order is made:

Upon the parties' agreement that the decision of the First-tier Tribunal promulgated on 7th November 2017 discloses a material error of law, it is hereby ordered by consent as follows:

- (1) the First-tier Tribunal Judge made errors of law in relation to the assessment of the issue of a marriage of convenience. The essence of the error being that the judge solely considered the Islamic marriage which took place in November 2015 between the EEA Sponsor and a third country national rather than considering the civil marriage ceremony which took place in 2017 - that being the formalisation of the relationship between the European national and third country national - which would be the relevant marriage when gauging whether a marriage of convenience exists against the EEA Regulations and the European Directive on Free Movement;
 - (2) in addition to the identified Grounds of Appeal, I further note the judge did not make reference to the most relevant authority from the Upper Tribunal, which would have been of assistance to her/him, that being *Papajorgji* [2012] UKUT 38 which appends the EU Commission Guidance on marriages of convenience to that reported decision,
 - (3) the matter is to be remitted to be heard by a Judge of the First-tier Tribunal other than Judge Buchanan.
2. The Appellants' appeal to the Upper Tribunal is therefore allowed.
 3. The decision of the First-tier Tribunal is set aside for legal error by consent.

Signed

Date 18th March 2018

Deputy Upper Tribunal Judge Saini